In The

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., et al.,
Petitioners,

vs.

CHARLES T. WOLF, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF AMICUS CURIAE ON BEHALF OF RESPONDENTS URGING DENIAL OF PETITION FOR WRIT OF CERTIORARI

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SUBJECT INDEX

Table of Authorities

CASES

CONSTITUTIONAL PROVISIONS AND STATUTES

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Supreme Court of the United States

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CONSENT TO FILE AMICUS CURIAE

With the consent of all counsel, Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America, hereby respectfully files a brief *Amicus Curiae* in this case in support of the Respondents.

The written consent of counsel for Respondents and of counsel for the Petitioners to file a brief *Amicus Curiae* in behalf of the Respondents is filed herewith.

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I

QUESTIONS PRESENTED

1. Did the decision of the Supreme Court of Georgia in *Jones* v. *Wolf*, 241 Ga. 208, 243 S.E. 2d 860 (1978) conflict with the First and Fourteenth Amendments of the U.S. Constitution and any decisions of this Court construing the same, including *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976)?

2. Is not this Court proscribed from decreeing common law rules as to property which is exclusively a state question?

II

INTEREST OF AMICUS CURIAE

Dr. G. Aiken Taylor, as Moderator of the General Assembly of the Presbyterian Church in America, occupies the highest presiding office to which a member of that Church may be elected annually. He represents an ecclesiastical body of approximately 70,000 members with churches located in twenty-three states.

The case before this Court is of great importance to the Presbyterian Church in America as one of several Presbyterian denominations which in their constitutions expressly reject the hierarchical philosophy of church property ownership.

Contrary to ordinarily accepted dictum, there is a body of general churches fully identified as Presbyterian in form, doctrine, and government which specifically affirm a congregational philosophy as to church property. The Constitution of the Presbyterian Church in America (Book of Church Order, paragraphs 26-9 and 26-10) reads:

> "All particular churches shall be entitled to hold, own and enjoy their own local properties, without any right of reversion whatsoever to any Presbytery, General Assembly, or any other courts hereafter created, trustees or other officers of such courts."

> "The provisions of this Chapter 26 are to be construed as a solemn covenant whereby the Church as a whole promises never to attempt to secure possession of the property of any congregation against its will, whether or not such congregation remains within or chooses to withdraw from this body. All officers and courts of the Church are hereby prohibited from making any such attempt."

On May 7, 1973, the Respondents and others constituting the majority of Vineville Presbyterian Church of Macon, Georgia, voted to become an independent church. Subsequently they united with the Central Georgia Presbytery of the Presbyterian Church in America.

It was action like that taken in 1861 when numerous churches, presbyteries, and synods withdrew from what is now the United Presbyterian Church in the United States of America to form the Presbyterian Church in the United States.

III

ARGUMENT

1.

The petition of R. W. Jones, Sr., et al. for a writ of certiorari should be denied.

The decision of the Supreme Court of Georgia in *Jones* v. *Wolf*, supra, does not violate the First and Fourteenth Amendments of the U. S. Constitution or any ruling of this Court enunciated in *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, supra. The charge of the Petitioners that this case commands the State Civil Courts to defer to the decision of a church court of a church with a connectional polity in a dispute between the loyal few and the departed majority is meritless. It ignores two controlling factors: the three guideline approach declared by Mr. Justice Brennan in *Maryland and Virginia Eldership of the Churches of God* v. *The Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); the basic issues in *Serbian Eastern Orthodox Diocese*.

Mr. Justice Brennan in *Maryland and Virginia Eldership*, supra, advised the states that there are three ap-

proaches that can be employed in resolving church property conflicts without transgressing First Amendment values. Succinctly they are: deference to church authority; neutral principles of law, and specially drafted state statutes.

Since 1969 when this Court remanded *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) to the Supreme Court of Georgia for reconsideration in light of the "neutral principles of law" promulgated by this Court, the Georgia Court has adhered to those principles with fidelity.

Evidence of the commitment to the neutral principles is reflected in every decision of the Georgia Court from *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 225 Ga. 259, 167 S.E. 2d 658 (1970) (hereafter *Hull*), to *Coles* v. *Wilburn*, 241 Ga. 322, 245 S.E. 2d 273 (1978). Between *Hull* and *Coles* the Georgia Court has rendered decisions in *Carnes* v. *Smith*, 236 Ga. 30, 222 S.E. 2d 322 (1976) and *Jones* v. *Wolf*, supra, the case sub judice.

All of these cases involved churches of a connectional polity. *Hull* and *Jones* involved a Presbyterian denomination; *Carnes* and *Coles* involved Methodist denominations.

In *Carnes*, in a dispute between factions, the denomination and the loyal minority prevailed. In *Hull*, *Jones*, and *Coles* the dissenting majority prevailed.

In those cases the Georgia Court limited its inquiry into deeds, church constitutions, and state law of trusts. Neutral principles of law were sanctioned by Mr. Justice Brennan in *Maryland and Virginia Eldership*, supra.

In *Carnes* v. *Smith*, supra, the Georgia Court applying the other "factors test" impressed an implied trust on the local property for the denomination based upon the provisions of the church's constitution, the Discipline.

The grounds upon which the Petitioners seek a writ of certiorari were presented to this Court in the second petition for a writ of certiorari in *Hull*. The petition presented these questions:

> "Does the recent decision of the Georgia Supreme Court which eliminates entirely the implied trust doctrine (which imposes a trust upon local church property in favor of the general church) violate the freedom of religion clause (Amendment I) and the due process of law clause (Amendment XIV, § 1) of the Constitution of the United States *when the effect of such decision is to overrule a valid and binding decision of a duly constituted church tribunal and to transfer use of particular church property from the denominational authority to the dissident and former members* of a particular church congregation who, before their secession, failed to seek any relief by the normal methods of appeal in the church?" (Emphasis supplied)
>
> "Is the implied trust doctrine which was established by the Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), still a valid and binding principle of law?"

This Court summarily rejected the grounds presented by these questions, by denying the petition for a writ of certiorari.

A similar disposition should be made of this petition. Because it, like the petition in *Hull*, makes the same basic allegation: failure to defer to the decision of a church court.

This assertion has been answered adversely to the Petitioner, tacitly in *Hull* and positively in *Maryland and Virginia Eldership.*

The interpretation that Petitioners have placed upon this Court's ruling in *Serbian Eastern Orthodox Diocese* will not stand scrutiny. It is based upon two erroneous assumptions: (1) that the issue involved a property dispute between factions over *local church property*; (2) that the ruling rescinded this Court's enunciations in *Hull*, instituting the "neutral principles" and repeated in *Maryland and Virginia Eldership,* countenancing the "neutral principles."

As to the first erroneous assumption, the facts of the case establish that the issues were exclusively ecclesiastical —the defrocking of a Bishop and the reorganization of a Diocese. The property question was a peripheral issue that was implicated because of the Bishop's authority over the Diocese. The property affected was vested in a corporation formed by the Diocese. No local church property was involved.

Parenthetically, at the same time *Hull* and *Maryland and Virginia Eldership* were before this Court, there was a third case pending, *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio* v. *Kelemen,* 393 U.S. 527 (1969). It, as the other two, was remanded for further consideration in light of *Hull.* Upon remand, the Ohio Supreme Court, applying the neutral principles of law, held:

> "In addition, the Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted

> contra to the doctrine and tenets of the church. In order to make such a finding the Court of Appeals had to examine plaintiff's activity as well as church doctrine and tenets. The *Hull Memorial case, supra,* held that a jury could not make such an examination, and the viability of the principle of the *Hull Memorial case* commands the same judicial abstinence in the instant case."
>
> "Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding Church doctrine. There are no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the Mother Church. Moreover, the Serbian Orthodox Church School Congregation of Akron provides, in part 'The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation.' Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation." (256 N.E. 2d at pages 216, 217)

The denomination involved in *Kelemen* is the same denomination that is involved in *Serbian Eastern Orthodox Diocese.* Though connectional (hierarchical) in its polity, the Serbian Church permits the congregational holding of property at the local level.[1]

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1. *Dragelevich* v. *Rajsich,* 263 N.E. 2d 778 (Ohio, 1970).

Following disposition on remand, a writ of certiorari was sought. It was denied by this Court. (400 U.S. 827 (1970)). Thus *Kelemen* joined the ranks of *Hull* and *Maryland and Virginia Eldership*.

Mr. Justice Brennan in *Serbian Eastern Orthodox Diocese*, supra, made it abundantly clear that the error of the Illinois Supreme Court was its rejection of the finding of a church court which had resolved an ecclesiastical issue. The property followed that determination of a church court because of the proprietary interest the denomination had in the Diocesan property. At page 425, he observed:

> [Because the Diocesan Bishop controls respondent Monastery and is the principal officer of respondent property holding corporations] "resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. *Thus, this case essentially involves not a church property dispute, but a religious dispute...*" (Emphasis supplied)

Such an interest is disclaimed by the denomination, "Petitioners have never argued that they or PCUS (Presbyterian Church in the United States) has any trust interest in the property."[2]

Though the Petitioners have been dubbed the loyalists, such a determination in the absence of a proprietary interest in the denomination does not vest the loyalists with any interest in the local church property. It is the proprietary interest of a general church that controls the dispute. *Watson* v. *Jones*, supra, is decisive on this conclusion. In *Watson* the local church prevailed because the Court found an implied trust in behalf of the general

2. Footnote 7, page 6 of petitioners' petition.

church upon the local church property. The designation of people without the collateral proprietary interest in the denomination passes nothing to the loyalists.

Contrary to what the Petitioners claim, *Serbian Eastern Orthodox Diocese* is not a constitutional command of this Court to defer to ecclesiastical edicts. This Court did not enfeeble the neutral principles. Actually, this Court's repeated reference to them affirms their vitality.

The Petitioners in their anxiety have confused the message in *Serbian Eastern Orthodox Diocese*. It was not a mandate to return to the "rule of action" of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). The opinion recognizes the *Watson* rule but in doing so it left the neutral principles of *Hull* undiminished, "for where resolution of the disputes *cannot* be made without extensive inquiry by civil courts into religious law and polity . . . civil courts . . . must accept such decisions within a church of hierarchical polity." Phrased in the positive rather than the negative, the charge by Mr. Justice Brennan would read, "where the resolution of the disputes can be made without extensive inquiry by civil courts into religious law and polity civil courts do not have to accept the decision of a church court of hierarchical polity." This extrapolation of the quote from *Serbian Eastern Orthodox Diocese* is consistent with this Court's rejection of the petition for a writ of certiorari filed in *Kelemen*, supra.

Supportive of this conclusion as to the meaning of *Serbian Eastern Orthodox Diocese*, are the references Mr. Justice Brennan makes to "formal title" (neutral principles) doctrine and the introduction of other criteria which might have affected the disposition of the Diocesan property (426 U.S. at pages 723 and 724).

The Supreme Court of Georgia in this case did not violate this Court's ruling in *Serbian Eastern Orthodox Diocese*. Its decision is in harmony with this Court's directives in that case and *Hull* and *Maryland and Virginia Eldership*. The Georgia Court employed the neutral principles of law, which it applied in *Hull* upon remand. In the most circumspect manner, it averted any inquiry into religious law or polity. It followed the neutral course though the Petitioners sought to ensnarl the Court in forbidden considerations.

If any confusion exists, it results from the Petitioners' unwillingness to accept the "neutral principles" of *Hull* and the "three guideline approach" of *Maryland and Virginia Eldership*. Some states have elected the "neutral principles approach", notably: Georgia, Maryland, Ohio, Tennessee, and Virginia. Other states have chosen the "deference approach". The approaches selected are permissible, under the directions of this Court. This Court since *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938) has acknowledged that in matters of property the respective states establish their own laws. The three approved guidelines of *Maryland and Virginia Eldership* are consonant with the philosophy of *Erie*.

Before passing to other issues raised by the Petitioners, the unwarranted categorizing of the neutral principles of *Hull*, at page 7 of the Petitioners' petition, commands contradiction. It reads, "However, in dictum in *Hull*, supra, 393 U.S. 449, this Court for the first time referred to neutral principles of law . . .". Such an appraisal is a futile attempt to demean a principle of law enunciated unanimously by this Court in 1969 and subsequently amplified in *Maryland and Virginia Eldership*, supra, in 1970, and sanctioned by the denial of certiorari in *Hull*, supra, in 1970.

Since the declaration of the neutral principles of law, the majority of the states in which church property disputes have arisen have applied it. In most instances the Presbyterian Church in the United States has retained possession of local church property. Two states bordering Georgia have employed the neutral principles to the success of that denomination. In both cases the dissenting majority lost. *Fairmount Presbyterian Church, Inc.* v. *Presbytery of Holston*, 531 S.W. 2d 301 (Tenn. 1975) and *Adickes* v. *Adkins*, 215 S.E. 2d 442 (S.C. 1975).[3]

What is *dictum* in Georgia is *law* in Tennessee and South Carolina. It would appear that the advocates of the denomination embrace the neutral principles as *law* where they are victorious but eschew them as *dictum* where they are vanquished.

At page 16 of Petitioners' brief is cited Section 22-5507 of the Georgia Code, "shall be fully and absolutely vested in such church or religious society . . . *according to the mode of church government* or rules or discipline." After citing this code section the Petitioners charge that the Georgia Supreme Court rejected the argument that this statute required the civil court to defer to a church court on the issue of which faction is the true church. The designation "mode of church government" lost any significance it might have had when the Georgia court in *Hull*, 225 Ga. 259, 167 S.E. 2d 658 (1970) (second appearance) excised the doctrine of implied trusts. The Court stated:

> "Under Georgia law, insofar as churches with a connective form of government are concerned, there

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3. Though calling its action an application of neutral principles, the South Carolina Court's ruling contradicts: "We have accepted the findings of the appropriate church judicatory as to the matter of identity." (215 S.E. 2d at page 445). Identity is not an element of the "formal title doctrine."

has been implied a trust on local church property for the benefit of the general church, but as a part of this rule the implied trust has been conditioned on the general church adhering to its tenets of faith and practice existing at the time of affiliation by the local church. See *Mack* v. *Kime,* 129 Ga. 1 (58 SE 184, 24 LRA (NS) 675); Code §22-408. In our review of these cases, we applied this rule of law."

"However, the United States Supreme Court, in reviewing our decision, held that although civil courts are the proper forum for resolving property disputes, the First Amendment to the United States Constitution forbids them from determining ecclesiastical questions in the process. For this reason, it reversed our decision, stating that 'the departure-from-doctrine element of Georgia's implied trust theory can play no role in any future judicial proceedings.' "

"This being the case, the entire theory must fall. Since Georgia chose to adopt the implied trust theory with this element as a condition, this court must assume that it would not have adopted the theory without this mode of protecting the local churches."

"Therefore, a part of the rule having been stricken, the remainder falls with it, and there is no implied trust on the property in controversy. There was no other basis for a trust in favor of the general church, none being created by the deeds on the property, implied under the statutes of this State (Code §§108-106, 108-107), or required by the constitution of the general church. It will be remembered that the general church put no funds into this property."

Mode of government refers to church polity. Since the Georgia Court's ruling on remand striking an implied

trust for the general church, the term "mode of government" has become meaningless. In subsequent holdings by the Court in *Carnes* v. *Smith,* supra, and *Coles* v. *Wilburn,* supra, the Court has ruled that other than a mere connectional relationship between a local and general church must be present to create an implied trust in favor of the general church.

Church polity is not the sole standard for resolving church property disputes. *Hull* and *Maryland and Virginia Eldership* attest.

Petitioners conclude their brief with the statement that if certiorari is granted they will argue that the neutral principles come into play only if no church procedures are available or have been followed. Such a proposition if accepted is tantamount to emasculating the neutral principles. The Petitioners do not seek the elimination of contrived confusion, they seek the eradication of equity. They advocate the return to doctrinal despotism in which the civil court becomes a surrogate of a church court.

The freedom heralded by this Court in *Hull* will be muted. The options now granted the states will be severely restricted, if not removed.

2.

In opposition to the second petition for certiorari in *Hull* (Case No. 384, October Term, 1969), the Respondents declared that the petition should be denied for the judgment of the Supreme Court of Georgia did not involve a Federal question. The same contention is declared here. The judgment of the Georgia Court does not involve a Federal question.

In rendering its decision the Supreme Court of Georgia focused on neutral criteria—deeds, corporate charter,

and the denomination's constitution. The examination of the Constitution (Book of Church Order) was limited to sections 6-1 and 6-2. None of these sections vest the Presbyterian Church in the U.S. with a proprietary or contractual interest in local church property. These sections vest *sole* control of church property in the congregation.

When the Georgia Court in *Hull* on remand awarded the control of property according to legal title as a matter of local property, it ruled consistently with the direction of this Court:

> "And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. at page 449.

The decision of the Georgia Court in the case sought to be reviewed leaves the parties where they have put themselves. Legal title was never transferred to the general church. Its constitution does not vest it with any proprietary interest.

The absence of a Federal question in this case was initially found when this case was before the United States Court of Appeals, Fifth Circuit (*Lucas* v. *Hope,* 515 F. 2d 234 (5 Cir. 1975), cert. denied, 424 U.S. 967 (1976)). That Court held that questions involving title and possession of real estate must be decided under state law where no Federal question is present.

The character of the case has not been altered because of its course within the Courts of Georgia. This case comes before this Court again void of any Federal question.

The Petitioners find themselves in an ironic and untenable position. They seek the aid of the judicial branch

of the Federal government to overrule the application of neutral principles of local law by the Georgia Court. The principles applied were in compliance with a directive from this Court. Such assistance is prohibited. This Court has ruled:

> "Neither a state nor the Federal Government can openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state'." *Everson* v. *Board of Education,* 330 U.S. 1, 16 (1946).

IV.

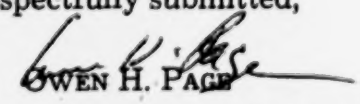
CONCLUSION

The Georgia Supreme Court decision now requested to be reviewed by the Petitioners violates no provisions of the U.S. Constitution. *First.* It was based on neutral principles of law. As such it is completely consistent with this Court's decisions in previous certiorari proceedings. *Second.* As the Georgia Court reached its decision free of any doctrinal considerations, it did not offend any of this Court's prior rulings in *Hull, Maryland and Virginia Eldership* or *Serbian Eastern Orthodox Diocese.*

The Supreme Court of Georgia's decision is constitutionally sound.

The petition for writ of certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Owen H. Page, of counsel for Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America, hereby certify that I have served a copy of the foregoing brief by depositing a copy of the same in the United States mail, properly stamped and addressed to each of the following:

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